

STATE OF MICHIGAN  
COURT OF APPEALS

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EMILY FRENCH, a Minor, by her Next Friend  
TINA FRENCH,

UNPUBLISHED  
July 19, 2011

Plaintiff-Appellee,

V

JOHN MACARTHUR,

No. 296526  
Muskegon Circuit Court  
LC No. 09-046465-NO

Defendant-Appellant.

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Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order denying his motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant.

Plaintiff was injured during a youth-league softball practice when, during a practice drill, defendant, a parent who volunteered to assist at practice, hit a line-drive that struck plaintiff's face while she stood on the pitcher's mound. Defendant moved for summary disposition under MCR 2.116(C)(10) on the grounds that plaintiff's suit was barred by the recreational activities doctrine set forth in *Ritchie-Gamester v City of Berkley*, 461 Mich 73; 597 NW2d 517 (1999). The trial court denied defendant's motion and we granted defendant leave to appeal.

We review de novo a trial court's decision on a motion for summary disposition. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007). A moving party is entitled to summary disposition pursuant to MCR 2.116(C)(10) when "except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." *Lugo v Ameritech Corp*, 464 Mich 512, 520; 629 NW2d 384 (2001), quoting MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds could differ." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006).

In *Ritchie-Gamester*, 461 Mich at 81, our Supreme Court changed the common law standard for liability between coparticipants in recreational activities. It rejected the ordinary negligence standard and adopted a "reckless misconduct" standard, stating:

[We] adopt reckless misconduct as the minimum standard of care for coparticipants in recreational activities. We believe that this standard most accurately reflects the actual expectations of participants in recreational activities. . . . [W]e believe that participants in recreational activities do not expect to sue or be sued for mere carelessness. A recklessness standard also encourages vigorous participation in recreational activities, while still providing protection from *egregious* conduct. [*Id.* at 89 (emphasis added).]

In this case, there is no genuine issue of material fact whether defendant was a “co-participant” at the girls’ softball practice. *Id.*; *Lugo*, 464 Mich at 520. Although he was a coach, we held in *Behar v Fox*, 249 Mich App 314, 318; 642 NW2d 426 (2001), that a defendant’s role as a coach does not necessarily take him out of the category of “co-participant.” More specifically, like the assistant coach in *Behar*, defendant, with permission of the head coach, was physically participating in the activity, i.e. taking part in the action on the field, and so, under *Behar* was a coparticipant.

The incident occurred during a practice drill in which a coach is supposed to hit a softball to the infielders or the outfielders after the child batter swung and missed. It is undisputed that defendant intended to hit a fly ball to centerfield and that he attempted to do so, but that instead his swing resulted in a line-drive at the pitcher’s mound that struck plaintiff. The only issue in dispute is whether defendant called out the word “outfield” before swinging in order to alert the players that he was swinging and where he intended to hit the ball. Assuming that defendant should have called out and failed to do so, we reject the claim that a reasonable juror could find that this error, in and of itself, constituted “reckless misconduct” as explained in *Ritchie-Gamester*. We agree that a reasonable juror could find negligence based on these facts, but no facts have been proffered that could justify a finding of reckless misconduct.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Douglas B. Shapiro  
/s/ Peter D. O’Connell  
/s/ Donald S. Owens